

STATE OF CALIFORNIA
DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION

PROPOSED CHANGES
UNDER THE BANKING LAW

CALIFORNIA CODE OF REGULATIONS,
TITLE 10, CHAPTER 1, SUBCHAPTER 10

MODIFIED: MARCH 5, 2021

(Additions shown by double underline and deletions shown by double strikethrough)

1. Section 10.112 is amended to read:

§ 10.112. Banking Business.

“Banking business” includes commercial banking business, ~~industrial banking business,~~
and trust business. “Banking business” also includes commercial banking business and
industrial banking business engaged in by a public bank.

Note: Authority cited: Section 326, Financial Code. Reference: Sections 103 and 119,
Financial Code.

2. Section 10.135.1 is adopted to read:

§ 10.135.1. Governing Board of Public Bank.

“Governing board of a public bank” means the board of directors of a public bank.

Note: Authority cited: Section 326, Financial Code, and Section 57607, Government
Code. Reference: Sections 54956.97 and 54956.98, Government Code.

3. Section 10.131.7 is adopted to read:

§ 10.131.7. Financial Product or Service.

(a) For purposes of Government Code section 57604, “financial product or service”
means a type of product or service offered by a financial institution, such as a loan or a
checking account or a savings account. Products and services are considered the same if they

are in the same product category such as being a loan, a checking account or a savings account, and offer the same, or substantially similar product features, benefits and terms such as fees and interest rates charged or earned based on the type of product or service. Products and services are not considered different due to differences such as interest rates or other product features at which competing financial institutions offer the same type product or service to attract business.

(b) At least 30 days prior to the date the public bank proposes to offer a financial product or service which the public bank believes is not offered by a local financial institution, the public bank must submit a written request to the Commissioner for approval to offer such product or service. The public bank must submit with its request comprehensive documentation and information dated no more than ninety (90) days before submission, which supports the bank's assertion that the product or service is not offered by a local financial institution. Such comprehensive documentation and information shall include: local market product offering surveys that include the product type, fees, interest rates, and additional terms, as well as any other information the public bank believes supports its request. The public bank shall not offer such product or service unless the Commissioner approves the public bank's request. If the Commissioner does not respond within thirty days of having received the required documentation and information, the public bank may offer such product or service.

Note: Authority cited: Section 326, Financial Code, and Section 57607, Government Code. Reference: Section 57604, Government Code.

4. Section 10.140.1 is adopted to read:

§ 10.140.1. Jurisdiction.

(a) For purposes of Government Code section 57604, "jurisdiction of the local agency or agencies" means the total geographic area covered or serviced by a local agency or local agencies.

(b) For purposes of Government Code section 57604, “jurisdiction of the public bank” means the jurisdiction of the local agency or agencies.

Note: Authority cited: Section 326, Financial Code, and Section 57607, Government Code. Reference: Section 57604, Government Code.

5. Section 10.141 is amended to read:

§ 10.141. Member.

“Member” means:

(a) When used with respect to a commercial or industrial bank, means a bank which is a member of the Federal Reserve System.

(b) When used with respect to a public bank, the local agency or local agencies that own the public bank. Nothing in this section prohibits a public bank from becoming a member of the Federal Reserve System.

Note: Authority cited: Section 326, Financial Code. Reference: Sections 507 and 508, Financial Code; Sections 54956.98 and 57601, Government Code.

6. Section 10.141.1 is adopted to read:

§ 10.141.1. Member of Governing Board of Public Bank.

(a) “Member of the governing board of the public bank” means a member of the board of directors of a public bank.

(b) “Designated alternative member of the governing board of the public bank” means the person designated by the local agency to represent the local agency at a meeting of the public bank’s board of directors in the event a primary regularly appointed member is not available.

Note: Authority cited: Section 326, Financial Code, and Section 57607, Government Code. Reference: Sections 54956.97 and 54956.98, Government Code.

7. Section 10.140.6 is adopted to read:

§ 10.140.6. Local Financial Institution.

~~Government Code section 57600 defines "local financial institution."~~

(a) For purposes of Government Code section 57604, the definition of "local financial institution" in Government Code section 57600 applies and the term is further defined as a financial institution that has a physical presence within the jurisdiction of the public bank at issue.

(b) "Physical presence" means one or more branch offices. A financial institution shall not be considered as having a physical presence within the jurisdiction of a public bank solely because the financial institution has automated teller machine(s), loan production office(s), or non-banking office(s) performing only corporate, administrative or back office functions within such jurisdiction.

Note: Authority cited: Section 326, Financial Code, and Section 57607, Government Code. Reference: Section 57604, Government Code.

8. Section 10.151 is amended to read:

§ 10.151. Organizer.

"Organizer," when used with respect to a corporation or other organization, means:

(a) Any person who, alone or in conjunction with one or more other persons, directly or indirectly takes the initiative in founding and organizing the business or enterprise of the corporation or other organization. In the case of a public bank, organizer means the local agency or agencies that file an application for a public bank charter; or

(b) Any person who, in connection with the founding and organizing of the business or enterprise of the corporation or other organization, directly or indirectly receives in consideration of services or property, or both, 10% or more of any class of securities of the corporation or

other organization or 10% or more of the proceeds from the sale of any class of such securities. However, any person who receives such securities or proceeds either solely as underwriting commissions or solely in consideration of property shall not be deemed to be an organizer if he does not otherwise take part in founding and organizing the corporation or other organization.

Each person who applies for authority to organize a California state bank and each person who is proposed in such application to be a director or the chief executive officer of such bank is rebuttably presumed to be an organizer of such bank.

Note: Authority cited: Section 326, Financial Code. Reference: Section 1022, Financial Code.

9. Section 10.166.1 is adopted to read:

§ 10.166.1. Stockholder.

For a public bank, "stockholder" means membership or member in the public bank.

Note: Authority cited: Section 326, Financial Code. Reference: Sections 1008 and 1022, Financial Code.

10. Subarticle 2, Article 4, Subchapter 10, Chapter 1, Title 10 is amended to read:

Subarticle 2. Establishment of California State Commercial Bank, Industrial Bank, or Independent Trust Company.

Note: Authority cited: Section 326, Financial Code. Reference: Section 1022, Financial Code.

11. Section 10.3000 is amended to read:

§ 10.3000. Scope.

This Article contains regulations relating to the establishment of California state banks. This Subarticle contains general provisions relating to the establishment of California state

banks. Subarticle 2 (commencing with Section 10.3100) of this Article contains regulations relating to the establishment of a California state commercial bank, of a California state industrial bank, or of a California state independent trust company pursuant to Chapter 1 (commencing with Section 1000) of the Banking Law. Subarticle 3 (commencing with Section 10.3700) of this Article contains regulations relating to the establishment of a trust department by a California state commercial bank pursuant to Financial Code Section 1551. (Subarticle 4 of this Article is reserved.) Subarticle 5 (commencing with Section 10.4300) of this Article contains regulations relating to the conversion of a California national bank into a California state bank pursuant to Article 2 (commencing with Section 4940) of Chapter 5 of the Depository Corporation Sale, Merger, and Conversion Law of the Financial Code.

Note: Authority cited: Sections 326 and 4831, Financial Code. Reference: Sections 321, 326, 334 and 1551, Financial Code.

12. Section 10.3100 is amended to read:

§ 10.3100. Definition of “Subject Institution” and Scope.

(a) In this Subarticle, “subject institution” means a California state bank which is or is proposed to be a commercial bank, industrial bank, or an independent trust company. “Subject institution” also means a California public bank which is proposed to be a commercial bank or industrial bank.

(b) This Subarticle contains regulations relating to the establishment of a subject institution pursuant to Chapter 1 (commencing with Section 1000) of the Banking Law. This Part contains general provisions relating to the establishment of a subject institution. Part 2 (commencing with Section 10.3150) of this Subarticle contains regulations relating to an application for authority to organize a subject institution. Part 3 (commencing with Section 10.3300) of this Subarticle contains regulations which set forth administrative standards and procedures relating to an application for authority to organize a subject institution. Part 4

(commencing with Section 10.3350) of this Subarticle contains regulations relating to the pre-incorporation period in the establishment of a subject institution. Part 5 (commencing with Section 10.3450) of this Subarticle contains regulations relating to the post-incorporation period in the establishment of a subject institution.

Note: Authority cited: Section 326, Financial Code. Reference: Section 1001, Financial Code.

13. Section 10.3301.1 is adopted to read:

§ 10.3301.1. Reasonable Promise of Successful Operation.

In evaluating an application for authority to organize and establish a corporation to engage in the banking or trust business, Financial Code section 1023 requires the commissioner to ascertain whether a proposed applicant will have a reasonable promise of successful operation. As an administrative standard, reasonable promise of successful operation is evaluated by the likelihood of achieving the goals laid out in the applicant's financial projections, such as financial stability, solvency, and reserves.

Note: Authority cited: Section 326, Financial Code. Reference: Section 1023, Financial Code.

14. Section 10.3402 is amended to read:

§ 10.3402. Exemptions.

There are hereby exempted from the provisions of Section ~~40.3402~~ 10.3401 of this Chapter as not being comprehended within the purposes of Section ~~40.3402~~ 10.3401 of this Chapter and the regulation of which is not necessary or appropriate in the public interest or for the protection of the public, the following transactions:

(a) The solicitation and acceptance by a proposed director, proposed officer, or organizer of a proposed subject institution from any proposed director, proposed officer, or

organizer of such proposed subject institution of pre-opening funds for the proposed subject institution, provided:

(1) No advertisement shall be published regarding the solicitation or acceptance of pre-opening funds.

(2) The total number of persons from whom pre-opening funds for the subject institution are accepted shall not exceed 25.

(3) No pre-opening funds shall be accepted from any person except pursuant to a written agreement which shall provide:

(A) Terms under which the pre-opening funds are accepted.

(B) Terms under which the pre-opening funds shall be held, including the name of the California commercial bank in which such money is to be deposited in accordance with Section 10.3405(a) of this Chapter and the name and address of the manager of the pre-incorporation pre-opening funds account.

(C) Terms under which the pre-opening funds shall be disbursed, including a provision that the pre-opening funds shall be expended only for the purpose of paying pre-opening expenditures of the proposed subject institution.

(D) Terms under which the pre-opening funds shall be repaid.

(E) That the pre-opening funds, if expended for the purpose of paying pre-opening expenditures of the proposed subject institution, may not be repaid unless, among other contingencies, an application for authority to organize the subject institution is filed with and approved by the Commissioner, the subject institution is organized and is issued a certificate of authority to transact commercial banking business, trust business, or both, as the case may be, the subject institution, in case it is a commercial bank, becomes an insured bank, and pre-opening expenditures are assumed by the subject institution and, in the case of pre-opening noncapital expenditures, approved by the Commissioner; and that no assurance can be given that any of the foregoing contingencies will occur.

(b) The solicitation and acceptance by a proposed director, proposed officer, or organizer of a proposed subject institution from any commercial bank of pre-opening funds for such proposed subject institution.

~~(c) Transactions involving a subject institution which is a proposed public bank are not eligible for this exemption even if the transactions otherwise meet the requirements in subdivision (a) or (b) of this Section.~~

Note: Authority cited: Section 215 326, Financial Code.